

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI**

*Albert J. Astarita, et al. v. Menard, Inc.*, Case No. 5:17-cv-06151  
United States District Court, Western District of Missouri, St. Joseph Division

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**NOTICE OF COLLECTIVE ACTION**

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TO: All present and former hourly employees who worked or are working at Menard's retail home improvement stores and/or distribution centers throughout the United States at any time from December 21, 2014 to the present, and participated in the In-Home Training Program without compensation, who worked 40 or more hours per workweek including any time spent in in-home training, and whose employment agreement does not contain a class or collective action waiver.

**Important: Any present or former hourly employees who, when first hired at Menard, originally executed an employment agreement that permitted participation in a class or collective action, but that after December 21, 2017, executed an employment agreement or an arbitration agreement that contained a class or collective action waiver, are not precluded from joining this collective action.**

RE: Your right to join a collective action seeking to recover alleged unpaid overtime pay.

**DEADLINE TO FILE CONSENT FORM: [45 days after notice is mailed], 2019**

<p><i>This is not a solicitation from a lawyer or from a law firm. A Court has authorized this Notice.</i></p>
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**BASIC INFORMATION**

<b>PURPOSE OF THIS NOTICE</b>
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Records maintained by Menard indicate that you currently work for or previously worked for or at a Menard's retail home improvement store and/or distribution center at any time during the period of December 21, 2014 to the present, and participated in the In-Home Training Program. This Notice explains information about a pending lawsuit in the U.S. District Court, Western District of Missouri, St. Joseph Division. This lawsuit is entitled *Albert J. Astarita, et al. v. Menard, Inc.*, Case No. 5:17-cv-06151. Based on the allegations made in the lawsuit, you may have legal rights to compensation for unpaid overtime. More information about your legal rights is contained in other sections of this Notice.

## WHAT IS THIS LAWSUIT ABOUT?

Two former Menard employees sued Menard. They are referred to as the Plaintiffs. Plaintiffs claim that Menard caused them to perform work off of the clock and without pay because Menard did not pay them for the time spent participating in the In-Home Training Program.

Plaintiffs claim that Menard has violated the federal Fair Labor Standards Act (“FLSA”). The Plaintiffs have asked for money damages and other relief on behalf of themselves and other employees who are similarly situated.

Menard denies liability and has asserted various defenses to Plaintiffs’ claims. If Menard’s arguments are sustained by the Court, the Class may recover less or nothing at all. At this time, the Court has not issued any decision as to who is right and who is wrong related to the allegations in this case.

## WHAT IS A COLLECTIVE ACTION?

A collective action under the Fair Labor Standards Act (“FLSA”) is a lawsuit in which one or more persons acting as representatives sue on behalf of other persons who have similar claims. When the Court certifies the case as a collective action, other similarly situated individuals, usually current and former coworkers, are invited to join the collective action, if they wish, by mailing a written notice indicating a desire to participate.

You are being informed of this collective action because you are eligible to participate. If you would like to participate you must sign and return the enclosed “Consent Form.”

## YOUR RIGHT TO PARTICIPATE IN THIS ACTION

Plaintiffs seek to sue not only for themselves but also for other persons with whom they alleged are similarly situated. Plaintiffs allege that those individuals consist of all present and former hourly employees, working at Menard’s retail home improvement stores and/or distribution centers throughout the United States who worked 40 or more hours per workweek, were not paid wages for the time spent on In-Home Training programs, and whose employment agreement does not contain a class or collective action waiver.

If you fit this definition, you have the right to choose to become a plaintiff in this action.

## HOW DO I PARTICIPATE?

To join this collective action, you must sign and return the enclosed “Consent Form.” If you choose to join this action, you must return the Consent Form by: (a) mailing it to [ADMINISTRATOR]; (b) faxing the form to [ADMINISTRATOR]; or (c) scanning the form and emailing it to [ADMINISTRATOR].

**The signed Consent Form must be postmarked, faxed or emailed by [45 days after notice is mailed].** It is important that you return the Consent Form as soon as possible because the time period for which you can seek payment for your unpaid overtime compensation will depend on

when this form is filed with the Court. If you lose or misplace the enclosed Consent Form, you may contact the [ADMINISTRATOR] for an additional copy.

#### **EFFECT OF JOINING THIS LAWSUIT**

If you choose to join this action, you will be bound by the judgment, whether it is favorable or unfavorable. You will also be bound by, and will share in, any settlement that may, or may not, be reached on behalf of the class.

By joining this action, you designate the Named Plaintiff(s) as your agents to make decisions on your behalf concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiffs' counsel concerning fees and costs and all other matters pertaining to this action. While this suit is proceeding, Plaintiffs' counsel will assist you in complying with any discovery obligations under the civil rules if you are required to respond to written questions, provide copies of documents in your possession or control or testify in a deposition or testify before the Court.

The Named Plaintiffs in this matter have entered into a contingency fee agreement with Plaintiffs' counsel, which means that if there is no recovery, there will be no attorneys' fees chargeable to you. If the Plaintiffs' claims are successful and there is a recovery of wages, liquidated damages and/or attorneys' fees and costs, the contingency fee percentage will be forty percent (40%) of your total recovery. Costs expended by Plaintiffs' counsel on your behalf will be deducted from your remaining recovery. If Menard is ordered by the Court to pay an amount of attorneys' fees and costs that equals or exceeds the amount owed under the contingency fee, Plaintiffs' counsel will accept the amount that Menard is ordered to pay, causing you to not incur attorneys' fees and costs under this agreement.

#### **RETALIATION PROHIBITED**

The law prohibits any employer from taking any action to discharge you, or in any manner harass, discriminate or retaliate against you for taking part in this action. This is true whether you currently work for Menard or for another employer. However, your employer is not required to pay your wages if you take time away from work related to this case.

#### **LEGAL EFFECT OF NOT JOINING THIS ACTION**

If you choose not to join this action, you will not be affected by any judgment or settlement rendered in this case, whether favorable or unfavorable to the class. You will not be entitled to share any amounts recovered by the class. You will be free to file your own lawsuit, or to not file any lawsuit at all; however, the pendency of this action will not stop the running of the statute of limitations as to any claims you may have until you file your own lawsuit.

#### **YOUR LEGAL REPRESENTATION IF YOU JOIN**

If you participate in this action, you will be represented by:

McClelland Law Firm, P.C.  
The Flagship Building  
200 Westwoods Drive  
Liberty, Missouri 64068  
Telephone: (816) 781-0002  
[ryan@mcclellandlawfirm.com](mailto:ryan@mcclellandlawfirm.com)

Stueve Siegel Hanson LLP  
460 Nichols Road, Suite 200  
Kansas City, Missouri 64112  
Telephone: (816) 714-7100  
[hanson@stuevesiegel.com](mailto:hanson@stuevesiegel.com)

<b>FURTHER INFORMATION</b>
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If you have questions about this case or about this Notice, further information may be obtained from Plaintiffs' Counsel.

**DO NOT CONTACT THE COURT WITH QUESTIONS ABOUT THIS CASE OR ABOUT THIS NOTICE. THIS NOTICE HAS BEEN AUTHORIZED BY THE COURT, BUT THE COURT TAKES NO POSITION REGARDING THE MERITS OF THE ALLEGATIONS AND/OR DEFENSES. THERE IS NO ASSURANCE THAT THE COURT WILL RULE IN FAVOR OF THE PLAINTIFFS OR IN FAVOR OF MENARD. THE COURT DOES NOT ENCOURAGE OR DISCOURAGE ANY PERSON FROM JOINING THIS LAWSUIT.**

Dated: \_\_\_\_\_

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI**

**ALBERT J. ASTARITA, and  
DIANA M. OWENS, individually, and on  
behalf of all others similarly situated,**

**Plaintiffs,**

**v.**

**MENARD, INC. d/b/a MENARDS,**

**Defendant.**

**Case No. 5:17-CV-06151-RK**

**CONSENT TO JOIN**

I hereby consent, agree, and opt-in to be a party plaintiff in the above-captioned collective action. I agree to be represented by McClelland Law Firm, P.C. and Stueve Siegel Hanson LLP. I understand that by filing this consent, I will be bound by the judgment of the Court on all issues in this case.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, ZIP Code

\_\_\_\_\_  
Phone Number(s)

\_\_\_\_\_  
E-Mail Address

\_\_\_\_\_  
Menard Location(s) Where I Worked

**FAX to: [ADMINISTRATOR]**

**EMAIL to: [ADMINISTRATOR]**

**MAIL to: [ADMINISTRATOR]**

**On or before: [45 days after notice is mailed]**